

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ENGELHARD CORPORATION,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

**Civil Action No. 05-11241-JLT**

*(Electronic filing)*

**JOINT MOTION TO AMEND  
BRIEFING SCHEDULE AND FORMAT FOR MOTIONS  
ADDRESSING PLAINTIFF'S FOURTH CAUSE OF ACTION**

Defendants United States of America, et al. (“United States”), and Plaintiff Engelhard Corporation (“Engelhard”) hereby respectfully move the Court for an order amending the briefing schedule pertaining to motions addressing Engelhard’s Fourth Cause of Action. Specifically, the parties’ opposition briefs are both due September 1, 2006, and the parties seek to extend the time to file their respective briefs by three weeks — to and including **September 22, 2006**. In support of this motion, parties represent the following:

1. At the close of the April 26, 2006 hearing regarding the United States' motion for partial dismissal, the Court requested that the parties prepare a joint briefing schedule for motions that would address the validity of Engelhard's Fourth Cause of Action. The Fourth Cause of Action is a claim for contribution pursuant to CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B).

2. On May 9, 2006, the Court approved the parties' joint proposed briefing schedule.

3. On July 14, 2006, the United States filed an unopposed motion to extend the time

in which to file its opening brief – to August 4, 2006. The motion also sought to commensurately extend the dates of the parties’ opposition and reply briefs. That motion was never acted upon by the Court, and was recently terminated as moot. However, on August 4, 2006, the parties both filed their respective motions and opening briefs regarding the Fourth Cause of Action.

4. The question whether a particular administrative settlement is sufficient to give rise to a right of contribution under Section 113(f)(3)(B) is one that has traditionally received little attention by litigants and courts. Thus, the preparation of the parties’ motions on this issue requires especially careful research, drafting, review, and coordination.

5. Undersigned counsel for the United States recognizes that a considerable period of time has passed since the Court approved the parties joint briefing schedule. However, in addition to preparing the United States’ brief for this case, undersigned counsel has been substantially engaged in a merits brief for EPA in State of Maine v. Johnson (1st Cir. No. 04-1363), and Penobscot Nation v. EPA (1st Cir. No. 04-1375), which are consolidated petitions for review of an EPA action under the Clean Water Act. Thus, the preparation of that brief, which will be 28,000 words in length, has prevented undersigned counsel for the United States from devoting time needed to draft the United States’ opposition brief in this case. The merits brief is due September 6, 2006, and undersigned counsel for the United States anticipates needing to devote considerable attention between today and that date on completing the brief.

6. The extension of time sought through this motion will not substantially delay this case, particularly since the resolution of validity of Engelhard’s CERCLA Section 113(f)(3)(B) claim will clarify, and potentially simplify the scope of the parties’ discovery efforts.

7. The joint proposed revised briefing schedule is as follows:

<u>Party/Brief</u>	<u>Current Filing Date</u>	<u>Revised Filing Date</u>
Parties' Opposition Briefs (35 pgs.)	September 1, 2006	<b>September 22, 2006</b>
Parties' Reply Briefs (10 pgs.)	September 15, 2006	<b>October 4, 2006</b>

In conclusion, for the foregoing reasons, the Court should approve the joint motion to amend the briefing schedule and format regarding Engelhard's Fourth Cause of Action.

SO ORDERED this \_\_\_\_\_ day of August 2006.

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The Honorable Joseph L. Tauro  
United States District Judge

Respectfully submitted,

August 29, 2006

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August 29, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> Day of August, 2006, I served a true and correct copy of the foregoing "Joint Proposed Order" on the following counsel of record, by ECF filing, as follows:

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